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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/684,017	10/10/2003	Paul A. Boerger	10002968-5	3218

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EXAMINER

LEE, TOMMY D

ART UNIT

PAPER NUMBER

2624

DATE MAILED: 09/15/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	10/684,017	BOERGER ET AL.
	Examiner Thomas D. Lee	Art Unit 2624

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 10 October 2003.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1,8,13 and 20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1,8,13 and 20 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: _____.

DETAILED ACTION

Response to Amendment

1. This Office action is responsive to applicant's preliminary amendment filed October 10, 2003. Claims 1, 8, 13 and 20 are pending.

Claim Rejections - 35 USC § 101

2. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claim 13 is rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

Claim 13 recites “[a]n article of manufacture comprising a *program storage* medium ...” (emphasis added) Functional descriptive material comprising computer programs or algorithms that impart functionality when employed as a computer component must be embodied on a *computer readable* medium (see MPEP 2106.IV.B1 (a)).

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1, 8 and 20 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent 5,016,027 (Uebbing).

Regarding claim 1, Uebbing teaches an image capture device, comprising: an illumination source (LED printhead (column 8, lines 43-47)); a thermal model of said illumination source that determines a temperature of said illumination source (column 8, lines 50-53); a light output model of said illumination source that determines a light output of said illumination source from said temperature (column 8, lines 53-57); and an exposure adjustment that is changed to compensate for changes in said illumination source as indicated by said model output (column 8, lines 57-68). Claims 8 and 20 recite similar limitations to those of claim 1 and are thus rejected as well.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

7. Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Uebbing.

Claim 13 recites an article of manufacture comprising a program storage medium having computer readable program code means for performing the steps corresponding to the limitations recited in above-rejected claims 1, 8 and 20. Although such a program storage medium is not taught by Uebbing, it is well known in the art to provide a program storage medium for performing processing steps in general, so that the processing steps may be performed by a computer as an alternative to specific hardware required for performing the processing steps, and thus it would have been obvious for one of ordinary skill in the art to provide a computer program for performing the steps disclosed by Uebbing.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thomas D. Lee whose telephone number is (571) 272-7436. The examiner can normally be reached on Monday-Friday (7:30-5:00), alternate Fridays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David K. Moore can be reached on (571) 272-7437. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Thomas D. Lee
Primary Examiner
Art Unit 2624

tdl
September 9, 2005